

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

H&R BLOCK SERVICES, INC.,	:	X
	:	
HRB INNOVATIONS, INC.,	:	Civil Action No.: 08-0550-CV-W-ODS
	:	
Plaintiffs,	:	COMPLAINT
	:	
v.	:	
	:	
AMERICAN EXPRESS COMPANY	:	
	:	
Defendant.	:	

COMPLAINT

Plaintiffs, H&R Block Services, Inc. (“H&R Block”) and HRB Innovations, Inc. (“Innovations”), bring this complaint against the Defendant, American Express Company (“American Express”), alleging as follows:

JURISDICTION AND VENUE

1. This is an action for injunctive relief, damages, and other relief under the Federal Trademark Act, 15 U.S.C. § 1051, *et seq.* (the “Lanham Act”), particularly 15 U.S.C. § 1114 and 15 U.S.C. § 1125, for trademark infringement, trademark dilution, false designation of origin, false description or representation, and related unfair competition. Plaintiffs also assert claims under the Missouri Trademark Act, Mo. Rev. Stat. § 417.005, *et seq.*, for trademark infringement and trademark dilution; and under common law for infringement and unfair competition.

2. The acts complained of have occurred in this District and in interstate commerce. Jurisdiction is based upon 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a) & (b). Venue is

proper in this District under 28 U.S.C. § 1391(b).

3. This Court has personal jurisdiction over American Express because American Express conducts business in this District and distributes its products and services in this District.

4. Venue is proper under 28 U.S.C. § 1391(b) because American Express conducts business in this District and a substantial part of the events giving rise to this action occurred in this District, and H&R Block and Innovations are being harmed in this District.

THE PARTIES

5. Plaintiff H&R Block Services, Inc. is a corporation organized and existing under the laws of the State of Missouri with its principal place of business at One H&R Block Way, Kansas City, Missouri, 64105.

6. Plaintiff HRB Innovations, Inc. is a corporation organized and existing under the laws of Delaware with its principal place of business at First Commercial Centre, Second Floor, Suite No. A, Freeport, GBI, Bahamas.

7. Defendant American Express is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at World Financial Center, 200 Vesey St, New York, New York 10285.

PLAINTIFFS AND THEIR “PEOPLE” TRADEMARKS

8. H&R Block is part of a family of companies that together have been preparing income taxes for over 50 years and are the world's largest preparers of income taxes, with over 90,000 tax professionals who have served over 20 million tax clients at nearly 12,500 retail offices and through digital tax solutions. H&R Block and its related entities have helped clients obtain nearly \$30 billion in tax refunds, credits, and other government benefits and have provided free tax and financial education in more than 60 cities across the United States. See

Exhibit 1, an extract from the H&R Block 2008 Annual Report, for more information about the H&R Block family of companies.

9. In 2006, H&R Block and its related entities began to invest significant resources into the development of a new advertising campaign (the “My People Campaign”). In the series of advertisements that make up the campaign, H&R Block customers “have people,” just like a celebrity, wealthy individual, or other person with extensive connections. Like those types of individuals, who can have secretaries or personal assistants (“people”) make appointments, prepare taxes, obtain concert tickets, and otherwise make the individual's life easier, the H&R Block customer, too, is a person who has people.

10. There are multiple advertisements in the My People Campaign, including television, radio, print, direct mail, billboard, bus wraps, other outdoor ads, and online advertisements including e-mail and banner ads. Each advertisement follows the same theme: that with H&R Block, you've got people. Some ads centered around the phrase “YOU GOT PEOPLE” while others used similar phrases, including MY PEOPLE, WE GOT PEOPLE, I GOT PEOPLE, and YOUR PEOPLE (collectively, the “PEOPLE Marks”). Copies of the television advertisements that are a part of the My People Campaign are included on the CD ROM attached as **Exhibit 14**.

11. The YOU GOT PEOPLE mark has been widely used on advertisements distributed throughout the country since at least as early as November 2006, including as part of larger statements that imply that with H&R Block, the customer has “people.” For example, in one advertisement, the tagline reads “Walk in and suddenly you got people.” (See **Exhibit 2a**, a copy of this advertisement). Another advertisement reads: “Get \$1,500 today. Without your W-2. You got people.” (See **Exhibit 2b**, a copy of this advertisement). Another advertisement

reads: "Your taxes. Your way. You got people." (See **Exhibit 2c**, a copy of this advertisement).

12. The MY PEOPLE mark has similarly been widely used. For example, in one advertisement, a real estate agent, placing an open house sign on the lawn, states "I take care of my clients. My people take care of me." (See **Exhibit 3a**, a copy of this advertisement). Another ad features a reclining man in a t-shirt, who states "Even at the last minute... my people find me every deduction." (See **Exhibit 3b**, a copy of this advertisement). A businessman on a cell phone, in another advertisement, states "My people dial in every deduction – even on my cell phone." (See **Exhibit 3c**, a copy of this advertisement). A man sitting outside his house with his dog, in another advertisement, says "My people are professionals in the tax field," "my people number more than 90,000," "my people have clout," and "my people work for me." (See **Exhibit 3d**, a copy of this advertisement).

13. The WE GOT PEOPLE mark has also been extensively used. It has appeared in advertisements that make up parts of the My People Campaign since January 2007, appearing in many advertisements distributed across the country. For example, in an advertisement featuring a man in an office, a man in a factory, and a female teacher in a classroom, the tagline reads: "Our tax professionals found us the most deductions. We got people." (See **Exhibit 4**, a copy of this advertisement).

14. The I GOT PEOPLE mark has also been extensively used. Since November 2007, H&R Block and its related entities have used the term on many advertisements distributed across the country, including as part of larger statements that imply that with H&R Block, the customer has "people." For example, in an advertisement featuring a soldier, the copy reads "I got people. And they do my taxes with military precision." (See **Exhibit 5a**, a copy of this

advertisement). In another advertisement with a man eating ice cream and sitting with his dog, the tagline reads: "I got people." (See **Exhibit 5b**, a copy of this advertisement). In another, a man says "I got \$1,500 today. Without my W-2. I got people." (See **Exhibit 5c**, a copy of this advertisement). An advertisement featuring a clerk in a grocery store reads: "I got what I needed. I got people." (See **Exhibit 5d**, a copy of this advertisement). Finally, an advertisement featuring a man washing his car reads: "How did I get professional tax advice at a discount? I got people." (See **Exhibit 5e**, a copy of this advertisement).

15. The YOUR PEOPLE mark has also been widely used since November 2007, including as part of larger statements that imply that with H&R Block, the customer has "people." For example, an advertisement featuring three tax preparers has a tagline that reads: "Time to put your people to work." (See **Exhibit 6a**, a copy of this advertisement). Another advertisement tells consumers that "Your people got you covered," "your people know the answers," and "your people are always there for you." (See **Exhibit 6b**, a copy of this advertisement).

16. H&R Block and its related entities have also used variations on their PEOPLE Marks, including, "When you've got H&R Block, you've got people looking out for you." (See Exhibit 4, page 2).

17. H&R Block and its related entities' My People Campaign has enjoyed wide critical acclaim and tremendous popular success. It has been recognized by national publications such as *Advertising Age*, *BrandWeek*, and *Market Watch*, and local publications across the country such as *The Kansas City Star* and West Virginia's *The State Journal*. For example, in reporting about the My People Campaign, journalists have noted the following:

Publication	Date	Synopsis	Exhibit
<i>State Journal</i> (West Virginia)	1/19/2007	Article discusses e-filing options for income taxes. Ad copy includes, <i>inter alia</i> , "The [H&R Block] \$60 package also includes a free session with a tax adviser, in line with the new 'You Got People' campaign the company is using to distinguish itself from its software-only competitors."	7a
<i>Finance & Commerce</i> (Minneapolis, MN)	1/20/2007	Article discussing competition between online tax preparation software providers focusing on H&R Block's advertising campaign with the "I got people" tagline. The article estimates that H&R Block has spent \$100 million on the campaign, including national TV, print, bus-wraps, T-shirts and the Internet, and states that epitomizing the campaign's "people" focus is a TV ad picturing a gas station attendant arranging the numbers on the street signs to read "Jerry 1. IRS 0. I got people."	7b
<i>Investor's Business Daily</i>	2/13/2007	Article on Intuit (maker of personal finance and tax preparation software) discussing the challenge it faces from competitor H&R Block. "Block continues to morph into a hybrid - a traditional tax preparation business and a seller of tax preparation software. It's trying to position itself as a different kind of tax software maker. Block's ad slogan this year, aimed at Intuit, is 'You got people.'"	7c
<i>Advertising Age</i>	2/19/2007	Article analyzes the My People Campaign, and looks at several commercials in the campaign, proclaiming the gem of the campaign to be "the one featuring Jerry, the owner of a mini-mart. With H&R Block's help, he's just come out of an audit unscathed. Now he's re-lettering his gasoline-price sign to read: 'Jerry 1, IRS 0.' Then, right underneath: 'I got people.'" The article continues on to note that "[t]o a person, these characters and those around them are impressed with the idea of having access – just like rich folks - to someone who can swoop in and do the taking-care-of."	7d
<i>Advertising Age</i>	5/14/2007	Article about advertising agencies which mentions Campbell-Mithun's work for H&R Block. "Block's resulting 'I Got People' campaign that launched earlier this year has drawn nearly universal praise."	7e
<i>Advertising Age</i>	12/17/2007	Article about advertisements that the author loved, including H&R Block's My People Campaign. Author states: "What was 2007-the Year of Insights? This one was probably the best. 'I got people' actually invested the mundane (and often completely unnecessary) act of consulting with a strip-mall tax preparer with the prestige attached to having an entourage or network of highly placed connections. It makes Joe 1040-EZ feel like a play-uh. The poor schmuck."	7f
<i>The Kansas City Star</i> (Missouri)	12/18/2007	Article includes <i>Advertising Age</i> critic Bob Garfield's year-end advertising and acting talent picks. "H&R Block also gets a nod from Garfield in his Top 10 spots, noting that the power of its tax-season 'I got people,' campaign."	7g
brandweek.com	1/14/2008	Article discussing Jackson Hewitt (tax preparation company). "Jackson Hewitt's main competition is category leader H&R Block, which is continuing a campaign themed 'I got people' from Campbell Mithun, Minneapolis, which shows ordinary people touting support from H&R's team of experts."	7h
<i>MarketWatch</i>	2/1/2008	Article on selecting your tax preparer which states that "H&R Block has capitalized on the emotional aspect with its 'I've got people' campaign."	7i
<i>The Kansas City Star</i> (Missouri)	2/26/2008	Article discussing self-appointed grammar policeman Dr. GoodWrite, which states that Dr. GoodWrite "is not amused over H&R Block's new advertising campaign that carries the slogan, 'You Got People.'"	7j

Publication	Date	Synopsis	Exhibit
<i>The Columbus Dispatch</i> (Ohio)	3/8/2008	Article where author discusses how he does the taxes of his friends and family and how he imagines “[his] friends and family members watching those commercials - think H&R Block’s ‘I got people’ - looking at one another and smiling, knowing they have that covered.”	7k
<i>Star Tribune</i> (Minneapolis, MN)	4/6/2008	Article on the study of behavior by advertising agencies discusses H&R Block commercials. “‘I’ve got people,’ goes the H&R Block TV ad set in a sauna where a client of the tax processor is bone dry while two other men are drenched in perspiration as they talk about taxes. ‘My people take the heat,’ the sweatless one says . . . Now someone is on their side.”	71

18. Many have gone beyond merely describing the My People Campaign, and have actually come to identify the phrase “I got people” with H&R Block. For example, in an article discussing tax filing options, the *Fort Worth Star-Telegram* identified H&R Block as “the ‘You Got People’ people.” (See **Exhibit 8**). In another article, containing a review of a TV show about the Drug Enforcement Agency by a *Boston Herald* reporter, the journalist described a scene on the show, where a suspect was apprehended in an alley. The suspect then stated “I own the alley. I got people.” The journalist described this line as “the funniest appropriation of H&R Block’s catchphrase.” (See **Exhibit 9a**). Similarly, in an article about a high school baseball game in *The Herald News*, the author attributed the pitcher’s ability to focus on the support she received from her team. In his description, the reporter analogized that “she focused like the H&R Block ‘I’ve got people’ commercial.” (See **Exhibit 9b**).

19. H&R Block and its related entities have spent hundreds of millions of dollars on national television, radio, print, web and direct mail advertisements featuring their PEOPLE Marks in 2007 and 2008.

20. The advertisements have clearly reached a wide audience. Indeed, *Advertising Age* reported that IAG Research, Inc. ranked three of the television commercials from the My People Campaign as among the top 10 most recalled advertisements in January 2007, and said that the majority of adults in the United States had heard of the PEOPLE Marks. (See **Exhibit**

10, a copy of the *Advertising Age* article). Similarly, in January of 2008, advertisements from the My People Campaign were ranked in the top 10 most liked and recalled television spots. (See **Exhibit 11**, a copy of the *Advertising Age* article).

21. On September 14, 2006, HRB Royalty, Inc., the intellectual property holding company related to H&R Block, filed U.S. trademark applications to register I GOT PEOPLE, YOU GOT PEOPLE, and WE GOT PEOPLE (Serial Nos. 78/974,176, 78/974,191, and 78/974,162). H&R Block is the licensee for these marks, and has widely used them, as described above. HRB Royalty, Inc. changed its name to HRB Innovations, Inc., on December 31, 2007. The applications matured to registration on April 15, 2008 (as Reg. Nos. 3,413,533, 3,413,534, and 3,413,532, respectively). Copies of the registrations are attached as **Exhibits 12a-c**.

22. By virtue of H&R Block and its related entities' extensive use of the PEOPLE Marks, through virtually every advertising medium, and the tremendously popular appeal of its My People Campaign, the PEOPLE Marks have become extremely well known, have acquired strong secondary meaning signifying H&R Block and its related entities, and represent valuable goodwill owned by H&R Block and its related entities.

DEFENDANT AND ITS "MY PEOPLE" COMMERCIAL

23. Defendant American Express is engaged in the business of providing credit card and various other financial services.

24. On April 28, 2008, subsequent to H&R Block's use of its PEOPLE Marks, American Express began running a television commercial, (the "My People Commercial"), with full knowledge of H&R Block's rights in the PEOPLE Marks, which commercial features Ellen DeGeneres and Beyonce Knowles, and centers around having Ms. DeGeneres' "people" call Ms. Knowles' "people." In the commercial, Ms. Knowles' begins by saying to Ms. DeGeneres,

“have your people call my people.” Ms. DeGeneres continues the theme, with statements like “You're my people, right?” “Gotta find my people,” “Let my people go,” and “I have people, you know.” During the approximately 60-second commercial, “people” is used no less than 12 times, the concept of “having people” is used 4 times, and “my people” is used 6 times. As such, these terms serve as an identifier of source to those watching the commercial. Indeed, in the commercial there is no mention of the Defendant or anything that might indicate that H&R Block is not the source of the My People Commercial until the very end, when Ms. DeGeneres refers to the Defendant, saying that she has the American Express card because the card represents “people who can get you into the shows I want to get into.” A transcript of the My People Commercial is attached as **Exhibit 13**, and copies of the 60 second and 30 second version of the advertisement are included on the CD ROM that is attached as Exhibit 14.

25. Upon learning of Defendant's My People Commercial, on or around May 1, 2008, H&R Block contacted the Defendant and alerted Defendant to H&R Block's concerns regarding Defendant's My People Commercial. In particular, H&R Block's inside counsel notified Defendant that it was infringing H&R Block's PEOPLE Marks. Defendant's in-house advertising counsel agreed to look into the matter, but ultimately referred H&R Block to outside counsel for Defendant's advertising agency.

26. H&R Block reiterated its concerns to outside counsel for Defendant's advertising agency, and was told in a voice mail message that the commercials would continue to run through at least September 2008. At no time did Defendant or counsel for Defendant's advertising agency dispute that Defendant's My People Commercial was confusingly similar to H&R Block's PEOPLE Marks.

27. Since well prior to airing its confusingly similar commercial, Defendant has been, or should have been, well aware of the goodwill represented and symbolized by the PEOPLE Marks and the tremendously popular My People Campaign. Defendant has also been, or should have been, well aware that the PEOPLE Marks and advertisements are widely recognized and relied upon by the public and the trade as identifying H&R Block, its related entities, and their services as distinguished from the products and services of others.

28. Notwithstanding that knowledge, Defendant created the My People Commercial, and knowingly misappropriated for itself the goodwill represented and symbolized by the PEOPLE Marks by running and continuing to run the My People Commercial.

29. Defendant's use of H&R Block and its related entities' PEOPLE Marks is without the license or consent of Plaintiffs.

30. Defendant's continued use of the PEOPLE Marks, after having received notice from H&R Block, constitutes willful infringement.

COUNT I: TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION

31. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1-30 as if fully set forth herein.

32. Defendant's aforesaid acts are likely to cause confusion, mistake, or deception as to the source of Defendant's products and services or to result in the belief that Defendant, or Defendant's services, are somehow legitimately connected with, sponsored, or approved by Plaintiffs.

33. Defendant's aforesaid acts constitute trademark infringement in violation of the Trademark Laws of the United States, 15 U.S.C. § 1114; the trademark laws of the State of

Missouri, Mo. Rev. Stat. § 417.005, *et seq.*; and the common law of the various states, including the State of Missouri.

34. Defendant's aforesaid acts constitute unfair competition with Plaintiffs in violation of the Trademark Laws of the United States, 15 U.S.C. § 1125(a)(1); and the common law of the various states, including the State of Missouri.

35. Defendant's aforesaid acts are greatly and irreparably damaging to Plaintiffs and will continue to damage Plaintiffs unless enjoined by this Court, wherefore Plaintiffs are without adequate remedy at law.

COUNT II: DILUTION

36. Innovations repeats and realleges the allegations set forth in paragraphs 1-35 as if fully set forth herein.

37. Defendant's aforesaid acts constitute dilution in violation of the Trademark Laws of the United States, 15 U.S.C. § 1125(c); and the anti-dilution statutes of the various states, including the State of Missouri, Mo. Rev. Stat. § 417.061.

38. Defendant's aforesaid acts are greatly and irreparably damaging to Innovations and will continue to damage Innovations unless enjoined by this Court, wherefore Plaintiffs are without adequate remedy at law.

WHEREFORE, Plaintiffs pray that:

A. The Court grant an injunction, according to the principles of equity and upon such terms as the court may deem reasonable in accordance with 15 U.S.C. § 1116 and Mo. Rev. Stat. § 417.061, and enjoin American Express, its agents, servants, employees, attorneys and all others in active concert or participation with American Express during the pendency of this action and permanently thereafter from:

1. further use or dissemination of the My People Commercial;
2. producing, preparing, or distributing any other advertising using the PEOPLE Marks or any other confusingly similar designation;
3. doing any other act or thing likely to induce the belief that American Express's products or services are in any way legitimately connected with, sponsored, or approved by Plaintiffs; and
4. doing anything likely to dilute the distinctiveness of Plaintiffs' PEOPLE Marks.

B. American Express be required to:

1. pay over to Plaintiffs all of Defendant's profits resulting from Defendant's violations of Plaintiffs' rights, in accordance with 15 U.S.C. § 1117;
2. pay over to Plaintiffs all of Defendant's profits derived from its wrongful use of Plaintiffs' marks in accordance with Mo. Rev. Stat. § 417.061;
3. pay to Plaintiffs any damages sustained by Plaintiffs, in accordance with 15 U.S.C. § 1117;
4. pay to Plaintiffs any damages suffered by reason of Defendant's wrongful use of Plaintiffs' marks in accordance with Mo. Rev. Stat. § 417.061;
5. pay to Plaintiffs the costs of this action and Plaintiffs' reasonable attorneys' fees and disbursements in accordance with 15 U.S.C. § 1117; and
6. file with this Court and serve on Plaintiffs a report in writing under oath setting forth in detail the manner and form in which American Express has complied with the terms of any injunction entered by this Court, in accordance with 15 U.S.C. § 1116.

C. Pursuant to 15 U.S.C. § 1117, the Court order all labels, signs, prints, packages, wrappers, receptacles, and advertisements in the possession of American Express, bearing the PEOPLE marks or the word, term, name, symbol, device, combination thereof, designation, description, or representation that is the subject of the violation, or any reproduction, counterfeit, copy, or colorable imitation thereof, and all plates, molds, matrices, and other means of making the same, shall be delivered up and destroyed.

D. Grant Plaintiffs such other and further relief as this Court deems just and equitable.

JURY DEMAND

Plaintiffs hereby demand and request trial by jury of all issues raised that are triable by jury.

H&R BLOCK SERVICES, INC. and HRB
INNOVATIONS, INC.

Dated: July 31, 2008

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